IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.11076 OF 1997

1. S. Durai Raj
2. W. Haridioss
3. S. Jagajeevanram
4. P. Kathirvelu
5. P. Madhivanan
6. M. Masilamani
7. A. Paramasivam .. Petitioners

-Vs-

1. The Presiding Officer,
I Additional Labour Court,
Chennai 104.

2. The Management of T.T.K. Pharma Ltd.,
(Orient Pharma Private Limited)
Pallavaram, Chennai 43. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.V. Prakash

For Respondents : Mr.Meenakshi Sundaram

:J U D G M E N T

Petitioners, seven in number, are quondam employees of the second respondent. They have prayed for issuance of writ of certiorari to quash the common award dated 20.11.1996 in I.D.Nos.970 to 976 of 1990.

2. The petitioners are part of 113 workmen under the second respondent, who were not given employment by the second respondent. At that stage, the recognised union, namely, Working People General Workers Union, represented by the Secretary had raised I.D.No.33 of 1979 relating to the question of non-employment of 113 workmen. The Industrial Tribunal, vide award dated 18.4.1990, even though found that nonemployment was not justified, did not direct reinstatement of the affected workmen, but on the other hand

directed that 113 workmen were entitled to one month's wages in lieu of notice and were further entitled to compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months.

3. 69 out of 113 affected workmen filed Claim Petition No.10 of 198 1 under Section 33-C(2) of the Industrial Disputes Act before the Labour Court for computation and payment of the benefits under the said award. The Union, however, chose to challenge the award dated 18.4.1 990 by filing W.P.No.881 of 1981 in this High Court in February, 1981 . While the writ petition itself was pending, the Union purportedly acting on behalf of all the affected workmen, entered into settlement dated 16.2.1981 under Section 12(3) of the Industrial Disputes Act in the presence of the Deputy Commissioner of Labour. Under the terms of the said settlement, it was agreed that a sum of Rs.43,000/- should be paid by the Management in full settlement of the claim in terms of the award dated 18.4.1980. A further clause in the settlement was to the effect that C.P.No.10 of 1981 should be withdrawn. Thereafter, in terms of the said settlement, C.P.No.10 of 1981 was dismissed as withdrawn by the Labour Court, Madras. A futile attempt was made by 69 workmen to set aside such order of dismissal by filing a restoration petition before the Labour Court. However, such application was dismissed.

4. In course of hearing of W.P.No.881 of 1981, the fact that a settlement had been arrived at under Section 12(3) of the Act was pressed into service by the management. It was argued on behalf of the Union at that stage that the settlement was contrary to the provisions contained in Section 25-J of the Act. It was also argued by the counsel for the Union at that stage that a fraud had been perpetrated upon the workmen by the office bearers of the Union and under the settlement, valuable rights of the workmen had been taken away without any justification.

5. A learned single Judge of this Court dismissed the writ petition on the ground that in view of such subsequent settlement, it was not open to the Union to proceed further with the writ petition. While dismissing the writ petition, it was observed :

" . . . It is up to the workmen to seek the appropriate process of law to set at naught the settlement dated 16.2.1981; but so long as the settlement stands, it will not be competent for the workmen to continue their challenge of the award in I.D.No.33 of 1979, the claims of the workmen in terms of the said award having been apparently settled under the settlement, dated 16.2.1981. In this view, this writ petition is dismissed. No costs. The dismissal of the Writ Petition shall not stand in the way of the workmen to impeach the settlement, dated 16.2.1981 in any manner known to law and thereafter work out their rights, in accordance with law."

6. Such decision of the learned single Judge dated 30.7.1987 was challenged by the Secretary of the Union in W.A.No.2318 of 1987. In the Division Bench decision dated 27.9.1989, it was observed :-

" . . . a settlement under Section 12(3) and 18(3) of the Act will

certainly prevail over the provisions of Chapter VA of the Industrial Disputes Act.

7. While considering the question as to whether settlement arrived between the Union and the Management under Section 12(3) of the Industrial Disputes Act was vitiated by fraud, it was observed that such question cannot fall within the purview of the writ petition. It was further observed :

. . . The writ petition is one challenging the correctness of the Award passed by the Industrial Tribunal. The settlement has come into force on a later date and if the workers have a grievance against the Secretary of the union and if their case is that the settlement is vitiated by fraud, they have got to work out their rights in other forums and other proceedings. This writ petition has been filed by the union itself represented by the Secretary. In fact, the question relating to the fraud vitiating the settlement will fall outside the scope of the writ petition. Consequently, that contention is also rejected.

It was further observed :-

As regards the third contention, we are of opinion that once the settlement has come into force, it will have the effect that the workers have accepted the Award passed by the Industrial Tribunal. It is only on that basis the workers approached the Labour Court to fix the quantum of compensation under Section 33C(2) of the Act. When that was pending before the Labour Court, the union and the management entered into settlement. That settlement under Section 12(3) of the Act is binding on all the workers, even if, some of them are not directly parties to the settlement. Hence, the writ petition cannot be continued by the union and the union is not entitled to challenge the correctness of the Award after the settlement.

Ultimately, while dismissing the appeal,however, it was indicated:

. . . It is not necessary for us to reiterate that the remedy of the appellants to challenge the validity of the settlement has been left open by the learned Judge himself and it is certainly open to them to work out their right elsewhere in accordance with law.

8. Thereafter, the present I.D.Nos.970 to 976 of 1990 were filed by the present petitioners. The allegations in all such petitioners were to the effect that non-employment of the concerned workman was illegal, unfair, unjust and violative of principles of natural justice and the petitioner was not a party to the settlement which terminated the proceedings before the adjudicating authorities. It was further claimed that the said settlement was void ab initio since the union had no locus standi to represent the petitioner.

9. A counter was filed by the management in the said proceedings. The stand of the management was to the effect that the earlier

award had not directed reinstatement of the workmen and as such, such award would operate as res judicata. It was further indicated that since the claim petition filed under Section 33C(2) had been dismissed, the petitioner cannot claim any further right beyond the terms of the settlement.

10. A translated copy of the impugned award has been furnished by the counsel appearing for the writ petitioner. The Presiding Officer, Labour Court, under the impugned award has come to the conclusion that the questions raised had already been decided and in view of the earlier history, no further relief could be given to any of the petitioners.

11. Mr.V. Prakash, learned counsel for the petitioners, has vehemently argued that the so called settlement under Section 12(3) of the Industrial Disputes Act was not binding on the petitioners as, such settlement was not signed by any authorised person on behalf of the Union. It was further contended by him that since the High Court itself has given liberty to the affected workmen to pursue their remedy and since the original non-employment was vitiated, the petitioners are entitled to claim reinstatement in service with all attendant benefits.

12. Learned counsel appearing for the management has contended that since the union has not been made a party either before the Labour Court or before the High Court and there is no allegation regarding fraud in respect of settlement arrived under section 12(3), the contentions raised by the petitioners are untenable.

13. Learned counsel appearing for the petitioners has placed reliance upon the decision reported in 1981(II) LLJ 184 (BROOKE BOND INDIA LTD., v. WORKMEN) in support of his contention that settlement in order to bind on the workmen should be signed by persons authorised by the union to enter into such settlement. It had been observed in the said decision as follows :

 It cannot be disputed that unless the office bearers who signed the agreement were authorised by the executive committee of the union to enter into a settlement or the constitution of the union contained a provision that one or more of its members would be competent to settle a dispute with the management, no agreement between any office bearer of the union and the management can be called a settlement as defined in S.2(p).

14. While there cannot be any dispute regarding the aforesaid principle, in the present case, absolutely there is no material to come to a conclusion that the settlement had been signed by any unauthorised person. As a matter of fact, in the petition under Section 2A(2), the only averment is to the effect that the petitioner was not a party to the settlement and . . . the said settlement was ab initio void since the party representing the workmen had no locus standi to represent the petitioner. No material has been produced either before the Labour Court or before this Court to indicate that settlement has been signed by some unauthorised persons. The Labour

Court has considered this aspect and come to a conclusion that there was no illegality in the settlement. In the absence of any categorical material on record, it is very difficult to come to a different conclusion in a proceedings under Article 226 of the Constitution.

15. Learned counsel for the petitioners has also contended that settlement has been vitiated by fraud. A perusal of the claim petition before the Labour Court indicates that absolutely there is no whisper about the alleged fraud. As a matter of fact, the Union is not a party. In the absence of Union as a party and in the absence of any specific allegation regarding fraud, mere submission without any basis cannot be accepted.

16. Apart from the fact that there is no sufficient material to come to a conclusion that settlement was vitiated in any matter, there is yet another hurdle on the path of the petitioners. It appears that the present petitioners had filed C.P.No.10 of 1981. Now they are claiming that they should be reinstated, whereas they have filed such C.P. for computation of the benefits under the previous award, obviously, therefore, indicating that they had accepted the award of the Labour Court, where under instead of reinstatement certain financial benefits had been extended. It is apparent that the said C.P. had been dismissed as withdrawn on account of the settlement. Even though there was an attempt to revive such C.P., such application was rejected. The petitioners/applicants in C.P. did not pursue the matter any further. Therefore, it would not be open to them to contend at a subsequent point of time that they should be reinstated in service.

17. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. No costs.

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To

1. The Presiding Officer,
I Additional Labour Court,
Chennai 104.

2. The Management of T.T.K. Pharma Ltd.,
(Orient Pharma Private Limited)
Pallavaram, Chennai 43.